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**13** Number of Pages (including this page)

Date: October 27, 2004  
  
To: Examiner Stephen M. D'Agosta – Art Group 2683  
  
Location: United States Patent and Trademark Office  
  
Fax No.: (703) 872-9306  
  
From: Hisashi David Watanabe - 37,465  
  
Subject: 09/650,118– Dorenbosch, Jheroen P., Confirmation No.: 9447  
et al.

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**MESSAGE:**

Enclosed herewith, please find APPEAL BRIEF and associated papers, if any, for filing in the below-identified application.

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EXAMINER:	D'Agosta, Stephen M.
GROUP ART UNIT:	2683
SERIAL NO.:	09/650,118
FILED:	AUGUST 28, 2000
INVENTOR:	DORENBOSCH, JHEROEN P., ET

AL.

OCT 27 2004

<b>TRANSMITTAL FORM</b> <small>(to be used for all correspondence after initial filing)</small>		Application Number	09/650,118
		Filing Date	August 28, 2000
		First Named Inventor	Dorenbosch, Jheroen P., et al.
		Group Art Unit	2683
		Examiner Name	D'Agosta, Stephen M.
Total Number of Pages in this Submission	12	Attorney Docket Number	PF02054NA

<b>ENCLOSURES</b>			(check all that apply)
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/Declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Documents <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts Under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-Related papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation, Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CDs _____	<input type="checkbox"/> After Allowance Communication to a Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter with appropriate copies <input type="checkbox"/> Other Enclosure(s) (please identify below)	
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Firm or Individual	Hisashi David Watanabe	Registration No.	37,465
Signature			
Date	October 27, 2004		

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ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th colspan="2">Large Entity</th> <th colspan="2">Small Entity</th> </tr> <tr> <th>Fee</th> <th>Fee</th> <th>Fee</th> <th>Fee</th> </tr> <tr> <th>Code</th> <th>(\$)</th> <th>Code</th> <th>(\$)</th> </tr> </thead> <tbody> <tr> <td>1051</td> <td>130</td> <td>2051</td> <td>65</td> <td>Surcharge - late filing fee or oath</td> </tr> <tr> <td>1052</td> <td>50</td> <td>2052</td> <td>25</td> <td>Surcharge - late Provisional filing</td> </tr> <tr> <td>1053</td> <td>130</td> <td>1053</td> <td>130</td> <td>Non-English specification</td> </tr> <tr> <td>1812</td> <td>2520</td> <td>1812</td> <td>2520</td> <td>For filing a request for ex parte Reexamination</td> </tr> <tr> <td>1804</td> <td>820*</td> <td>1804</td> <td>820*</td> <td>Requesting publication of SIR prior to Examiner action</td> </tr> <tr> <td>1805</td> <td>1840*</td> <td>1805</td> <td>1840*</td> <td>Requesting publication of SIR after Examiner action</td> </tr> <tr> <td>1251</td> <td>110</td> <td>2251</td> <td>55</td> <td>Extension for reply within first month</td> </tr> <tr> <td>1252</td> <td>430</td> <td>2252</td> <td>215</td> <td>Extension for reply within second month</td> </tr> <tr> <td>1253</td> <td>980</td> <td>2253</td> <td>490</td> <td>Extension for reply within third month</td> </tr> <tr> <td>1254</td> <td>1530</td> <td>2254</td> <td>785</td> <td>Extension for reply within fourth month</td> </tr> <tr> <td>1255</td> <td>2080</td> <td>2255</td> <td>1040</td> <td>Extension for reply within fifth month</td> </tr> <tr> <td>1401</td> <td>340</td> <td>2401</td> <td>170</td> <td>Notice of Appeal</td> </tr> <tr> <td>1402</td> <td>340</td> <td>2402</td> <td>170</td> <td>Filing a brief in support of an appeal</td> </tr> <tr> <td>1403</td> <td>300</td> <td>2403</td> <td>150</td> <td>Request for oral hearing</td> </tr> <tr> <td>1451</td> <td>1510</td> <td>1451</td> <td>1510</td> <td>Petition to institute a public use proceeding</td> </tr> <tr> <td>1452</td> <td>110</td> <td>2452</td> <td>55</td> <td>Petition to revive - unavoidable</td> </tr> <tr> <td>1453</td> <td>1370</td> <td>2453</td> <td>685</td> <td>Petition to revive - unintentional</td> </tr> <tr> <td>1501</td> <td>1370</td> <td>2501</td> <td>685</td> <td>Utility issue fee (or reissue)</td> </tr> <tr> <td>1502</td> <td>490</td> <td>2502</td> <td>245</td> <td>Design issue fee</td> </tr> <tr> <td>1503</td> <td>660</td> <td>2503</td> <td>330</td> <td>Plant issue fee</td> </tr> <tr> <td>1460</td> <td>130</td> <td>1460</td> <td>130</td> <td>Petitions to the Director</td> </tr> <tr> <td>1807</td> <td>50</td> <td>1807</td> <td>50</td> <td>Processing fee under 37 CFR 1.17(q)</td> </tr> <tr> <td>1806</td> <td>180</td> <td>1806</td> <td>180</td> <td>Submission of IDS</td> </tr> <tr> <td>8021</td> <td>40</td> <td>8021</td> <td>40</td> <td>Recording each patent assignment per property (times number of properties)</td> </tr> <tr> <td>1809</td> <td>790</td> <td>2809</td> <td>395</td> <td>Filing a submission after final rejection (37 CFR § 1.129(a))</td> </tr> <tr> <td>1810</td> <td>790</td> <td>2810</td> <td>395</td> <td>For each additional invention to be examined (37 CFR § 1.129(b))</td> </tr> <tr> <td>1801</td> <td>790</td> <td>2801</td> <td>395</td> <td>Request for Continued Examination (RCE)</td> </tr> <tr> <td>1802</td> <td>900</td> <td>1802</td> <td>900</td> <td>Request for expedited examination of a design application</td> </tr> <tr> <td colspan="4">Other fee (specify) _____</td> <td colspan="4">SUBTOTAL (3) <b>(\$)</b> <b>340.00</b></td> </tr> <tr> <td colspan="4">* Reduced by Basic Filing Fee Paid</td> <td colspan="4">SUBTOTAL (3) <b>(\$)</b> <b>340.00</b></td> </tr> <tr> <td colspan="4"> <b>SUBMITTED BY</b>          Name (Print/Type) <b>Hisashi David Watanabe</b>          Signature <b>Hisashi D. Watanabe</b> </td> <td colspan="4">           Complete (if applicable)          Registration No. <b>37,465</b>      Telephone <b>(847) 523-2322</b>          Date <b>October 27, 2004</b> </td> </tr> </tbody> </table>				Large Entity		Small Entity		Fee	Fee	Fee	Fee	Code	(\$)	Code	(\$)	1051	130	2051	65	Surcharge - late filing fee or oath	1052	50	2052	25	Surcharge - late Provisional filing	1053	130	1053	130	Non-English specification	1812	2520	1812	2520	For filing a request for ex parte Reexamination	1804	820*	1804	820*	Requesting publication of SIR prior to Examiner action	1805	1840*	1805	1840*	Requesting publication of SIR after Examiner action	1251	110	2251	55	Extension for reply within first month	1252	430	2252	215	Extension for reply within second month	1253	980	2253	490	Extension for reply within third month	1254	1530	2254	785	Extension for reply within fourth month	1255	2080	2255	1040	Extension for reply within fifth month	1401	340	2401	170	Notice of Appeal	1402	340	2402	170	Filing a brief in support of an appeal	1403	300	2403	150	Request for oral hearing	1451	1510	1451	1510	Petition to institute a public use proceeding	1452	110	2452	55	Petition to revive - unavoidable	1453	1370	2453	685	Petition to revive - unintentional	1501	1370	2501	685	Utility issue fee (or reissue)	1502	490	2502	245	Design issue fee	1503	660	2503	330	Plant issue fee	1460	130	1460	130	Petitions to the Director	1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	1806	180	1806	180	Submission of IDS	8021	40	8021	40	Recording each patent assignment per property (times number of properties)	1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	1801	790	2801	395	Request for Continued Examination (RCE)	1802	900	1802	900	Request for expedited examination of a design application	Other fee (specify) _____				SUBTOTAL (3) <b>(\$)</b> <b>340.00</b>				* Reduced by Basic Filing Fee Paid				SUBTOTAL (3) <b>(\$)</b> <b>340.00</b>				<b>SUBMITTED BY</b> Name (Print/Type) <b>Hisashi David Watanabe</b> Signature <b>Hisashi D. 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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(S): Dorenbosch, Jheroen P., et al. )  
SERIAL NO.: 09/650,118 )  
FILED: August 28, 2000 )  
TITLED: A Communication System That Provides )  
Backup Communication Services To A )  
Plurality of Communication Devices )  
EXAMINER: D'Agosta, Stephen M. )  
GROUP: 2683 )  
DOCKET NO.: PF02054NA )

APPELLANTS' BRIEF UNDER 37 CFR 41.37

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October 27, 2004

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**I. REAL PARTY IN INTEREST**

The party named in the caption of this brief is the real party in interest.

**II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to the Applicant, the Applicant's legal representative, or assignee which would directly affect or be directly affected by or having a bearing on the Board's decision in this pending appeal.

**III. STATUS OF CLAIMS**

Claims 1, 3 through 11 and 13 through 18 are rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 6,408,182 to Davidson, et al. ("Davidson, et al. patent") in view of U.S. Patent No. 6,192,232 to Iseyama ("Iseyama patent").

Claims 1, 3 through 11 and 14 through 18 are being appealed. Claims 1, 3 through 11 and 14 through 18 stand or fall together.

Applicants attempted to correct a typographical error in claim 13, by filing an Amendment After Final on July 2, 2004, but the Amendment was not entered, as indicated by an Advisory Action of August 26, 2004. Accordingly, claim 13 is not being appealed.

**IV. STATUS OF AMENDMENTS**

An Amendment After Final was filed July 2, 2004, subsequent to a final rejection mailed April 29, 2004. Applicants have received an Advisory Action mailed August 26, 2004.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention relates to a system that provides communication service to all communication devices during normal operation, irrespective of the service priority associated with each communication device. However, when one or more main system components go out of service, for example, due to a fault condition or for maintenance, the system provides backup service in accordance with a class of service associated with each communication device. For example, the system may provide backup service to communication devices that are subscribed to a first class of service priority, but terminates service to communication devices that are subscribed to a second class of service priority.

Support for the above recitation is provided at page 4, lines 8 through 21, of the specification.

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Whether claims 1, 3 through 11 and 14 through 18 are unpatentable under 35 U.S.C. § 103(a) as being obvious in view of the Davidson, et al. patent in view of the Iseyama patent.

**VII. ARGUMENT**

Claim 1 provides, *inter alia*, "at least one first communication device subscribed to a first class of service and at least one second communication device subscribed to a second class of service". Similarly, claim 10 provides, *inter alia*, providing service if a device subscribes to a first class of service and terminating service if the device subscribes to a second class of service. Accordingly, claims 1 and 10 require a device to subscribe to at least one of either a first class of service and a second class of service. In particular, the device must have a subscription-based

relationship with the class or classes. When the device requests service, e.g., requests a call, the system retrieves the subscription information from the database, stored at device or on the network, and based on the subscription information of the device provides or terminates the requested service. Support for the above recitation is provided at page 3, line 20, through page 5, line 12; page 7, lines 3 through 21; and page 12, line 7, through page 13, line 16, of the specification.

The final Office Action of April 29, 2004, (at page 3, second to last paragraph) states that the Davidson, et al. patent fails to teach a plurality of communication devices that include at least one first communication device subscribed to a first class of service and at least one second communication device subscribed to a second class of service, among other things. Applicants agree with this statement about the Davidson, et al. patent.

Likewise, the Iseyama patent does not describe or suggest any type of device that subscribes to at least one of either a first class of service and a second class of service. The Iseyama patent does not describe or suggest the existence of a subscription relationship between a devices and a class of service. In fact, the Iseyama patent describes all devices as having equal or similar priority.

The Iseyama patent does describe different system behaviors that are triggered by different types of calls. For example, in FIG. 1 of the Iseyama patent, the Mobile Station 70 appears to be an ordinary MS, i.e., the Iseyama patent does not make any indication that the MS 70 is different from any other MS or subscribes to a different class of service. The MS 70, without belonging to any particular class of service, may exhibit a different system behavior by requesting a specific type of call. For example, col. 1, lines 27 through 30, describes an ordinary mobile station making a special kind of call: a request to connect an emergency call to a police

station of a fire department. *Hence, the service type described by the Iseyama patent is a property of the call, not a property of the device as required by claims 1 and 10.* It should be additionally noted that col. 8, lines 61 through 64, of the Iseyama patent describes the capability of initiating calls of different degree of emergency by a single MS, thus teaching away from the requirements of claims 1 and 10. Therefore, claims 1 and 10 distinguish patentably from the Davidson, et al. patent, the Iseyama patent and the combination of these patents.

Also, the Davidson, et al. patent does not describe or suggest providing or terminating services from a backup device to a wireless device based on information obtained from a database. The databases (VLR and HLR) are only used to store relevant information about the wireless device that show how and where the device is serviced (col. 4, lines 6 through 14). Moreover, there is no indication in the Davidson, et al. patent of providing or terminating service to a particular wireless device based on information retrieved from a database. The only text suggesting termination is in col. 5, lines 44 through 46, where the BSC may clear existing connections. The decision of whether to terminate does not depend on subscription information or any other information from the database but on which MSC is being used for the call. Moreover, the termination is not done in a backup system component (backup MSC) nor the main system component (main MSC), but the termination is performed in a third, unrelated system component, namely the BSC. Therefore, claims 1 and 10 further distinguish patentably from the Davidson, et al. patent, the Iseyama patent and the combination of these patents.

Claims 3 through 9, 11 and 14 through 18 depend from and include all limitations of independent claims 1 and 10. Therefore claims 3 through 9, 11 and 14 through 18 distinguish patentably from the Davidson, et al. patent, the Iseyama patent and the combination of these patents for the reasons stated above for claims 1 and 10.

For the reason set forth above, Applicant respectfully requests reconsideration of claims 1, 3 through 11 and 14 through 18 as pending in view of the above remarks.

Respectfully submitted,

Dorenbosch, Jheroen, et al.

by:

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**VIII. CLAIMS APPENDIX**

1. A communication system that provides backup wireless communication services, comprising:

a plurality of communication devices that include at least one first communication device subscribed to a first class of service and at least one second communication device subscribed to a second class of service;

a database including subscription information of the at least one first communication device and the at least one second communication device;

a main system component that normally serves all of the plurality of the communication devices; and

a backup system component for the main system component that, in response to the main system component going out of service, operates to:

obtain subscription information from the database for a particular communication device needing service;

provide service to the particular communication device needing service if the subscription information indicates that the particular communication device subscribes to the first class of service; and

terminate service to the particular communication device needing service if the subscription information indicates that the particular communication device subscribes to the second class of service.

2. (Canceled)

3. The communication system of claim 1, wherein the first class of service has a higher service priority relative to the second class of service.

4. The communication system of claim 3, wherein the first class of service corresponds to an emergency service and the second class of service corresponds to a non-emergency service.

5. The communication system of claim 1, wherein the main system component is a main base station and the backup system component is a backup base station.

6. The communication system of claim 1, wherein the backup system component has a lower capacity than the main system component for substantially same coverage area.

7. The communication system of claim 1, wherein the backup system has a higher reliability than the main system component.

8. The communication system of claim 1, wherein information about the class of service for each communication device is stored in the system.

9. The communication system of claim 1, wherein the at least one communication device informs the system relative to a subscribed class of service.

10. A method for providing wireless communication services to a plurality of communication devices, wherein the plurality of communication devices include at least one first communication device subscribed to a first class of service and at least one second communication device subscribed to a second class of service, comprising:

normally serving all of the plurality of the communication devices using a main system component;

providing service to a particular communication device by a backup system component, in response to the main system component going out of service, if the particular communication device subscribes to the first class of service; and

terminating service to the particular communication device, in response to the main system component going out of service, if the particular communication device subscribes to the second class of service.

11. The method of claim 10, wherein the backup system component only serves the at least one first communication device subscribed to the first class of service, when the main system component goes out of service.

12. (Cancelled)

13. The method of claim 12, wherein the first class of service has a higher service priority relative to the second class of service

14. The method of claim 10, wherein the main system component is a main base station and the backup system component is a backup base station.

15. The method of claim 10, wherein the backup system component has a lower capacity than the main system component for substantially same coverage area.

16. The method of claim 10, wherein the backup system has a higher reliability than the main system component.

17. The communication system of claim 1, wherein the plurality of communication devices, the at least one first communication device, and the at least one second communication device are mobile communication devices.

18. The method of claim 10, wherein the plurality of communication devices, the at least one first communication device, and the at least one second communication device are mobile communication devices.

**IX. EVIDENCE APPENDIX**

No evidence has been submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, entered by the examiner and relied upon by the appellant in the appeal, or relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

**X. RELATED PROCEEDINGS APPENDIX**

No decisions have been rendered by a court of the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of 37 C.F.R. § 41.37.